

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE: §
§
BENJAMIN JOE GIRON, AKA BEN GIRON, § CASE NO. 21-30070-HCM-CH11
AKA 5405 MONTOYA DR. GROUP HOME, §
AKA THE LIGHT HOUSE FOSTER CARE §
HOME, DBA LIGHT HOUSE SENIOR CARE §
HOME, LLC, DBA MELENDRES HOME LLC §
§
DEBTOR, §

MOTION TO DISMISS CASE AS TO LIGHT HOUSE SENIOR CARE HOME, LLC
WITH PREJUDICE TO THE REFILING FOR ONE YEAR

TO THE HON. H. CHRISTOPHER MOTT, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, EQUITY TRUST CO., CUSTODIAN FBO CHARLES J. HORAK, JR. IRA, (“Movant”) by and through the undersigned attorney, and files this Motion to Dismiss Case as to Light House Senior Care Home, LLC with Prejudice to the Refiling for One Year in the above-styled and numbered cause. Movant would respectfully show the Court as follows:

NOTICE

**THIS PLEADING REQUESTS RELIEF WHICH MAY BE ADVERSE TO
YOUR INTEREST.**

**IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY-ONE (21)
DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED
HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.**

**A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO
BE HELD.**

1. On February 2, 2021, Debtor filed for relief under Chapter 11 of Title 11, United States Code. This case has not previously been converted from another Chapter of Title 11.
2. Upon information and belief, Light House Senior Care Center, LLC, is a corporation wholly owned by the Debtor.

3. This is the Debtor's third bankruptcy filing within one year and the Debtor's sixth case overall.

4. At the time of filing the Chapter 11 petition, Light House Senior Care Center, LLC was indebted to Movant pursuant to a Promissory Note executed on November 1, 2019, in the original amount of ONE HUNDRED THIRTY-TWO THOUSAND AND NO/100THS DOLLARS (\$132,000.00) with interest thereon at the rate of 10% per annum.

5. The obligation of the Light House Senior Care Center, LLC to pay the indebtedness is secured by a Deed of Trust dated November 1, 2019, on real property with all improvements known as:

LOT 3, LA LOMITA SUBDIVISION, LOCATED IN THE CITY OF LAS CRUCES, COUNTY OF DONA ANA, STATE OF NEW MEXICO, AS SHOWN ON PLAT THEREOF RECORDED ON MARCH 16, 1951 AS PLAT NO. 388, RECORDS OF DONA ANA MUNICIPALLY KNOWN AS 585 N. MELENDRES, LAS CRUCES, NEW MEXICO.

6. At the time of the instant filing, Light House Senior Care Center, LLC was eleven (11) months in arrears. Since executing the note in November, 2019, Light House Senior Care Center, LLC has only made four (4) payments on the loan.

7. Prior to the filing of the first case in August, Movant had begun foreclosure proceedings and made demand on Debtor. The Debtor then filed for relief under Chapter 13 of the Bankruptcy Code on August 29, 2020, case no. 20-30966. The Debtor filed an emergency petition and then did not prepare Schedules or Statement of Financial Affairs. The Debtor subsequently requested dismissal of the case on September 27, 2020 and an order dismissing the case was entered September 28, 2020. No payments were made during the pendency of this case either to the Trustee or to Movant.

7. The Debtor then filed another Chapter 13 on November 2, 2020, case no. 20-31151,

again without Schedules and Statement of Financial Affairs. The requisite documents were subsequently filed on November 17, 2020. The Chapter 13 case was dismissed on January 8, 2021 for failure to make plan payments. The Debtor made no payments to Movant during the pendency of the case as set forth in his Chapter 13 Plan.

8. The Debtor subsequently filed the instant Chapter 11 case on February 2, 2021.

9. In each of the Debtor's cases, including this Chapter 11, the Debtor has attempted to include LLCs as Joint Debtors. Movant would assert that the LLCs are not eligible to be joint debtors pursuant to 11 U.S.C. §302. Section 302 defines a joint case as a single petition filed by a debtor that may be a debtor under such chapter and said individual's spouse. While Mr. Giron may be a debtor under Subchapter V, Light House Senior Care Center, LLC is not his "spouse", and, therefore, cannot be a joint debtor with Mr. Giron.

10. Based on the foregoing, Movant would request that the court dismiss Light House Senior Care Center, LLC, from the instant Chapter 11. Further, Movant would also request that based on the Debtor's history of repeated filings, the dismissal should be with prejudice to the refiling of any bankruptcy for Light House Senior Care Center, LLC for a period of one year.

11. A copy of the proposed order is attached hereto.

WHEREFORE, PREMISES CONSIDERED, EQUITY TRUST CO., CUSTODIAN FBO CHARLES J. HORAK, JR., IRA, Movant, prays that this Court enter an order dismissing Light House Senior Care Center, LLC from the instant case with prejudice to the refiling of a case under any Chapter for Light House Senior Care Center, LLC for a period of one year, and that Movant be granted such other and further relief as is just.

DATED this 8th day of February, 2021.

RESPECTFULLY SUBMITTED,

THE LAW OFFICES OF CHERYL S. DAVIS, PC
Attorneys for Movant
11601 Pellicano Dr., Bldg. B-18
El Paso, Texas 79936
(915) 565-9000
(915) 565-9191 (fax)
By: /s/ Cheryl S. Davis
CHERYL S. DAVIS
SBN: 24002456

CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the foregoing was mailed or sent via ecf to all parties on the attached matrix on the 8th day of February, 2021.

/s/ Cheryl S. Davis
CHERYL S. DAVIS